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Letter dated 5 January 2011 from the Secretary-General to the President of the Security Council

I would like to refer to three letters received from the Federal Democratic Republic of Nepal, one from the office of the caretaker Government of Nepal dated 31 December 2010 (see annex I) and two from the Chairman of the Unified Communist Party of Nepal (Maoist), Mr. Pushpa Kamal Dahal "Prachanda", dated 30 December 2010 (see annex II) and 4 January 2011, respectively (see annex III).

The letter dated 31 December 2010 from the office of the caretaker Government provides information on how, from its point of view, issues relating to the monitoring of arms and armies and dispute-resolution mechanisms should be handled after the withdrawal of the United Nations Mission in Nepal (UNMIN) on 15 January 2011, and requests the transfer of essential documents and equipment used by UNMIN to either the Special Committee or a designated mechanism.

The letter dated 30 December 2010 from Chairman Prachanda requests, on behalf of the Unified Communist Party of Nepal (Maoist), the extension of the tenure of UNMIN or the setting up of a United Nations political office to follow up the peace process. The second letter, dated 4 January 2011, was written in response to the letter dated 31 December 2010 from the caretaker Government of Nepal and raises strong objections to all the key elements contained therein.

I should be grateful if you would bring the present letter and its annexes to the attention of the members of the Security Council.

(*Signed*) **BAN** Ki-moon

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Annex I to the letter dated 5 January 2011 from the Secretary-General addressed to the President of the Security Council

Letter dated 31 December 2010 from the office of the caretaker Government of Nepal to the Representative of the Secretary-General in Nepal

We would like to bracket a number of issues that are raised often as the mandate of the United Nations Mission in Nepal (UNMIN) is coming to an end on 15 January 2011. The concerned parties to the peace process of Nepal have clearly envisioned constitutional provisions together with the Comprehensive Peace Accord and subsequent agreements and understandings for the integration and rehabilitation of the Maoist Army combatants. It is necessary to take note of all those constitutional provisions and other arrangements to ensure smooth transition after the departure of UNMIN from Nepal.

1. Monitoring of Maoist cantonments and arms containers

As provided under article 146 and 147 of the Interim Constitution of Nepal, the Special Committee (SC) represented by all the major political parties, including the Unified Communist Party of Nepal (Maoist), is authorized for the supervision, integration and rehabilitation of the Maoist Army combatants. The SC secretariat will take charge of supervision, including the monitoring functions currently carried out by UNMIN. Detailed guidelines for this purpose are contained in the directives for supervision, control, direction and code of conduct for the Maoist Army combatants 2067, issued by SC on 17 September 2010 unanimously. Any issues that are not adequately covered by the above directives will be dealt by SC as and when required.

2. Monitoring of the Nepal Army and arms

According to clause 10.5 of the Comprehensive Peace Accord, the concept of two sides is no longer relevant. It is further evidenced by the formation of the Maoist-led government in 2008-2009. Articles 144 and 145 of the Interim Constitution of Nepal and the Nepal Army Act 2007 provide detailed guidance for the management, control and monitoring of the Nepal Army. Rigorous implementation of the above by designated agencies of the State would ensure the required monitoring of the Nepal Army. Furthermore, the Government of Nepal has already prepared a report for the democratization of the Nepal Army and the report has been sent to the political parties represented in the Constituent Assembly and the State Affairs Committee in the Parliament for their consideration.

3. Status of the Agreement on Monitoring of the Management of Arms and Armies (AMMAA) and dispute resolution mechanism

Several mechanisms, including commissions and committees, are envisaged and agreed between the political parties for dispute resolution and creating a congenial environment through confidence-building measures for the success of the ongoing peace process. The Special Committee is one of the major mechanisms to manage any unresolved issues and other disputes that might come up in future.

AMMAA was agreed much before the Interim Constitution and the Constituent Assembly poll. Subsequent developments have overtaken much of the provisions of

AMMAA. The mandate of SC and the Nepal Army Act 2063, both of which are in accordance with the Interim Constitution of the country, cover most of the points of AMMAA. However, as mentioned earlier, any points that are not covered both in the mandate and the directives passed by SC and may come up as disputes in future would be resolved by consensus in SC, where the major parties, including UCPN (Maoist), are members.

With SC fully in charge of monitoring of Maoist Army combatants and arms and the Nepal Army managed under existing constitutional and legal provisions, there is no longer a need for any dispute resolution mechanism in addition to the already agreed aforementioned mechanisms.

4. Transfer of essential documents and equipment used by UNMIN

As the Special Committee is taking charge of all matters relating to the integration and rehabilitation of Maoist Army combatants, the transfer of all materials to the Special Committee or to the appropriate mechanism designated by SC is expected. It is essential to ensure smooth transition of the monitoring functions previously carried out by UNMIN, and to maintain institutional memory, relevant documents, equipment and logistics to carry out the remaining tasks ahead. The following documents, materials and equipment related to the monitoring work should be handed over to either SC or the designated mechanism:

1. The containers with arms and ammunitions.
2. Updated details of the arms and armies.
3. Documents retained by the Joint Monitoring Coordination Committee (JMCC).
4. Barcode-readable software for both the combatants' ID cards and weapons.
5. Any other equipment and materials.

The ultimate objective of the integration and rehabilitation of Maoist Army combatants and related tasks is to bring the ongoing peace process to a meaningful conclusion and to establish sustained peace and democracy in the country. All parties concerned, including the Government, are committed to the earliest possible integration and rehabilitation of Maoist Army combatants to ensure peace and success of the constitution-making process in the country. Therefore, the above-mentioned monitoring mechanism should be for the shortest possible period. The major focus of SC is, therefore, to expedite the integration and rehabilitation process rather than creating an additional complex supervision and monitoring mechanism.

We hope that, with the understanding and cooperation of all sides, the Special Committee will be able to carry out all tasks regarding the integration and rehabilitation of Maoist Army combatants and other relevant responsibilities in a smoother way.

(*Signed*) Bimal Prasad **Wagle**
Secretary

Annex II to the letter dated 5 January 2011 from the Secretary-General addressed to the President of the Security Council

Letter dated 30 December 2010 from the Chairman of the Unified Communist Party of Nepal (Maoist) to the Secretary-General

As you are well aware, after the historic people's movement of April 2006, the Unified Communist Party of Nepal (Maoist) decided to enter into the peace process, station our combatants and store our weapons in the United Nations monitored cantonments. Our decision was based on our Party's unflinching commitment to and faith in the United Nations and our reiterated conviction that the expertise of the United Nations and its active involvement is required in Nepal to take the current peace process to its logical conclusion.

The sovereign people of Nepal through the elections to the Constituent Assembly held in 2008 made us the largest party in the House. However, despite our strength in parliament, a loose coalition mostly run by those that were defeated in the elections assumed power and since then this Government has made every effort to discredit the United Nations Mission in Nepal (UNMIN) and publicly defame the United Nations, and has tried its best to push Nepal back to conflict. Nevertheless, this Government has resigned and its resignation has also been duly accepted by our Head of State. With a status of a caretaker, this administration cannot take far-reaching decisions, a limitation which it has violated by asking UNMIN to leave on 15 January 2011.

Additionally, our Constitution under article 147 categorically mentions the Comprehensive Peace Accords and the Agreement on Monitoring of Arms and Army Management reached on 21 November 2006 and 8 December 2006, respectively, in which the role and function of UNMIN has been stipulated. Hence, the exit of UNMIN without the completion of the peace process or an amendment of the Constitution will lead to a Constitutional crisis in our country.

Currently, we are in the process of forming a new Government, but this caretaker administration is conspiring to delay the election for the new Prime Minister until after 15 January 2011, when the term of UNMIN expires.

Against this backdrop, on behalf of my Party and myself, I would like to officially request an extension of the UNMIN tenure, which is essential for the sake of peace and democracy in Nepal. In case this is not possible, I would like to request you to set up a United Nations political office to follow up the peace process. I am hopeful that the United Nations, under your able leadership, will not abandon Nepal's peace process midway and thereby promote conflict and violence in a country which has twice been elected to the United Nations Security Council.

(*Signed*) Pushpa Kamal Dahal "**Prachanda**"
Chairman, UCPN (Maoist) and Former Prime Minister
Kathmandu, Nepal

Annex III to the letter dated 5 January 2011 from the Secretary-General addressed to the President of the Security Council

Letter dated 4 January 2011 from the Chairman of the Unified Communist Party of Nepal (Maoist) to the Representative of the Secretary-General in Nepal

We would like to inform you that the letter of the office of the Prime Minister and Council of Ministers dated 31 December 2010, written to your office, has drawn the serious attention of the Unified Communist Party of Nepal (Maoist) (UCPN). Our Party expresses strong objections to that letter and wishes to clarify its position as follows:

1. The Government's argument that the Special Committee (SC) will automatically take charge of the tasks done by the United Nations Mission in Nepal (UNMIN), according to its mandate, after UNMIN leaves, is totally against the letter and spirit of the Comprehensive Peace Agreement (CPA) and Agreement on Monitoring of the Management of Arms and Armies (AMMAA) as provided in article 147 of the Interim Constitution of Nepal. Our Party takes it as a misinterpretation and violation of CPA and AMMAA and totally disagrees with it. Without any further understanding and agreement among the concerned parties of the peace process, SC cannot do the work which UNMIN is doing.

2. The exclusion of the Nepal Army from the purview of monitoring by the mechanism which monitors the People's Liberation Army combatants is totally against CPA and AMMAA and cannot be agreed to.

3. CPA and AMMAA are the fundamental basis of our peace process, without any additional understanding and agreements. The Government's unilateral conception that SC is fully competent to perform all the tasks of the peace process, including monitoring, integration and rehabilitation, is totally against those agreements.

4. UCPN (Maoist) strongly objects to the Government's request for the transfer of documents and equipment used by UNMIN, while implementing its mandate to SC. In this respect, our Party requests UNMIN not to hand over those materials to SC or the Government without any further understanding and agreements among the concerned parties of the peace process, the major political parties and the Government. Those materials, including arms and ammunition, are very sensitive parts of the peace process. To hand over such sensitive materials, which are under the jurisdiction of UNMIN, without consensus among the concerned parties of the peace process and major political parties, will be strongly objectionable to us. This may even risk the breaching of the peace process itself.

We believe that UNMIN will take our concerns seriously and will not act according to the unilateral letter of the Government. We also hope that UNMIN will brief the United Nations Security Council about our concern raised in this letter.

(*Signed*) **Prachanda**
Chairman